"We acquiesce in the conclusion arrived at, so far as the case at bar is concerned."

We are of opinion that the true rule upon this question, is that laid down in *Graham* v. *Anderson*, 42 Ill. 514. That case was much stronger than the one before us, for there were allegations touching privy examination of the wife, &c. The court, after discussing some other features of the case, said: "But another more important question remains, and that is, in the absence of fraud or imposition, in proving the execution of a deed by a wife, is parol evidence admissible in an action of ejectment to impeach the certificate? We have examined the authorities on this point, and we think where the certificate of the privy examination of a married woman is in the form required by statute, it is not sufficient, in order to impeach it, to allege that there was no private examination, that she did not acknowledge the deed as her act and deed, that she did not release her homestead right. There must be some allegation of fraud or imposition practiced toward her, some fraudulent combination between the parties interested, and the officer taking the acknowledgment:" *Ridgely* v. *Howard*, 3 H. & McH. 321; *Jamison* v. *Jamison*, 3 Whart. 457; *Hartley* v. *Frost*, 6 Texas 208. *Green* v. *Godfrey*, 45 Maine 25, which was an action of ejectment, is to the same effect.

We are therefore of opinion that in an action of ejectment where the certificate of the officer as to the acknowledgment appears on its face to be in substantial compliance with the statute, parol evidence to impeach it is inadmissible, unless there are allegations in the pleadings to warrant it. Judgment affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF OHIO.[1]

SUPREME COURT OF PENNSYLVANIA.[2]

SUPREME COURT OF VERMONT.[3]

AGENT.

Performance by Deputy.—One having authority to sign the name of another to a subscription paper, may procure a third to do it in his presence: *Norwich University* v. *Dana*, 47 Vt.

[1] From E. L. DeWitt, Esq., Reporter; to appear in 25 Ohio State Reports.

[2] From P. F. Smith, Esq., Reporter; to appear in 77 Pennsylvania Reports.

[3] From Hon. J. W. Rowell, Reporter; to appear in 47 Vermont Reports.

ASSUMPSIT.

Liability for Services performed for Another.—In order to make one liable for service performed for another, he must either thereunto expressly promise, or so conduct himself that the party rendering the service has a right to understand, and does understand, that he will be responsible therefor: *Redfield* v. *Dana*, 47 Vt.

ATTACHMENT.

Garnishee—Payment to Debtor after Service.—In an action by the plaintiff in attachment against the garnishee, to recover money in his hands at the time process was served by copies left at his usual place of residence, it is no defence for the garnishee to show that he was absent from home at the time of such service, and that his agent, who had knowledge of the time and manner of the service, afterward, and before his return, paid over the money in his hands to the defendant in attachment before the garnishee had actual notice: *Conley* v. *Chilcote*, 25 Ohio State.

It is not an available defence in such action for the garnishee to show that the defendant in attachment was entitled to and could have held the money in his hands at the time of the service of garnishee process, under the exemption laws of the state: *Id.*

ATTORNEY.

Fees are not Costs.—In an action on an injunction bond, the plaintiff cannot recover for attorneys' fees in the original case, except those paid for services rendered in efforts to dissolve or modify the provisional injunction, or otherwise occasioned by its allowance or subsistence: *Riddle et al.* v. *Cheadle*, 25 Ohio State.

BILLS AND NOTES.

Defence against Holder.—In a suit by an endorser on a negotiable note, the affidavit of defence averred that it had been given as the consideration for land agreed to be purchased from the payee, that material conditions in the agreement, which he specified, had not been performed by payee, that the plaintiff, knowing all the circumstances, took it as collateral security for the payee, and for collection, and paid nothing for it. *Held*, that these facts put the plaintiff on no higher ground than the original holder, and that they were a good defence against the note: *Bronson* v. *Silverman*, 77 Pa.

CHARITY. See *Constitutional Law.*

CONSTITUTIONAL LAW. See *Insurance.*

Title of Statute—Defining Contents and Purpose of the Act.—The title of an act was "An Act providing for an equitable division of property between Allegheny county and city of Pittsburg." The county composed a poor district, known as the Allegheny County Home; certain townships of the county were annexed to Pittsburg; two sections of the act provided that the value of the interest of the annexed townships in the Home property should be ascertained and paid to the guardians of the poor of Pittsburg; the third section extended the provisions of the act to Allegheny City as provided for Pittsburg. *Held*, that the two

sections were constitutional, and did not contain more than one subject which was not expressed in the title: *Allegheny County Home's Case*, 77 Pa.

Even if the third section were unconstitutional, that did not affect the constitutionality of the other sections: *Id.*

All that is required is that the title fairly give notice of the subject of the act, so as reasonably to lead to an inquiry into its body: *Id.*

The title should not mislead or tend to avert inquiry into the contents of the act: *Id.*

Public Use—Charity—Schools—Exemption from Taxation.—In section 2, article 12, of the Constitution, which authorizes the General Assembly to exempt from taxation the classes of property therein described, the word "public" is used, in some instances, to describe the ownership of the property, in others as merely descriptive of the use to which the property is applied. As applied to school-houses, it is used in the former sense; and by "public school-houses" is meant such as belong to the public, and are designed for schools established and conducted under public authority: *Gerke, County Treasurer*, v. *Purcell*, 25 Ohio State.

The fact that the use of property is free, is not a necessary element in determining whether the use is public or not. If the use is of such a nature as concerns the public, and the right to its enjoyment is open to the public upon equal terms, the use will be public, whether compensation be exacted or not. Whether the use is free or not, becomes material only where some other element is involved than that of its public character, as, for instance, whether the use is charitable as well as public: *Id.*

A charity, in a legal sense, includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, without any particular reference to the poor: *Id.*

Schools established by private donations, and which are carried on for the benefit of the public, and not with a view to profit, are "institutions of purely public charity" within the meaning of the provision of the Constitution, which authorizes such institutions to be exempt from taxation: *Id.*

The Constitution, in directing the levying of taxes and in authorizing exemptions from taxation, has reference to property, and the uses to which it is applied; and where property is appropriated to the support of a charity which is purely public, the legislature may exempt it from taxation, without reference to the manner in which the title is held, and without regard to the form or character of the organization adopted to administer the charity: *Id.*

The express authority given in the Constitution to exempt from taxation "houses used exclusively for public worship," carries with it, impliedly, authority to exempt such grounds as may be reasonably necessary for their use; but such grounds must subserve the same exclusive use to which the buildings are required to be devoted: *Id.*

A parsonage, although built on ground which might otherwise be exempt as attached to the church edifice, does not come within the exemption. The ground in such case is appropriated to a new and different use Instead of being used exclusively for public worship, it becomes

a place of private residence. The exemption is not of such houses as may be used for the *support* of public worship, but of houses used exclusively as *places* of public worship : *Id.*

Legislative Power to Legitimate Children.—Land was devised " to my son Thomas * * * to have and to hold to him and his heirs and assigns, subject to the legacies hereinafter mentioned and charged upon the same, provided that if my son Thomas should die without an heir, then all the bequeathments to him shall be divided between my son Alexander and his children, their heirs and assigns for ever." The testator left other children and grandchildren, who would be heirs of Thomas: *Held*, that " die without an heir," meant die without a child capable of inheriting from him : *McGunnigle* v. *McKee*, 77 Pa.

Thomas had an illegitimate daughter, who was legitimatized by Act of Assembly, and made " capable to inherit and transmit any estate as fully as if she had been born in lawful wedlock." Thomas devised the above land to his daughter. *Held*, that the land passed to her ; *Id.*

By the act the daughter became for all purposes of inheritance the lawful child and prospective heir of Thomas, and vested with the same inheritable blood as if born to him on that day in wedlock : *Id.*

From that time till his death Thomas had a child capable of inheriting from him; the child having survived him, the condition of the devise to him was fulfilled and the estate became absolute in him : *Id.*

The legislature has power to remove the legal taint, either by general or special law, for all purposes of future inheritance : *Id.*

The averment of the parentage of a child in an Act of Assembly legitimatizing it, is primâ facie evidence of its truthfulness : *Id.*

CONTRACT.

Public Policy—Damages.—A contract to forbear purchasing an interest in certain lands at private sale, and to assist another in the purchase thereof, is not void as against public policy : *Morrison* v. *Darling*, 47 Vt.

The plaintiff had purchased four undivided fifths of certain lands, but failed to purchase the other fifth because the defendants purchased it in violation of such contract ; whereupon the plaintiff procured partition thereof by the Probate Court. *Held*, that the true rule of damages was, what the fifth purchased by the defendants was worth more than what the plaintiff would have had to pay for it but for its purchase by the defendant ; and that the plaintiff could not recover the expense of such partition : *Id.*

CORPORATION.

Quo Warranto—Status as to Citizenship.—Where a company of individuals associated themselves together for the purpose of manufacturing paper and flour, and organized as a corporation in accordance with the forms prescribed by the statute, establishing their office and place of corporate business in Ohio : *Held*, that they thereby became a legal corporation of Ohio, notwithstanding it was the secret intention of its members, at the time of their organization, to carry on their manufacturing operations exclusively in another state, and notwithstanding the fact that they have ever since carried them on accordingly : *State of Ohio, on relation of the Attorney-General*, v. *Taylor et al.*, 25 Ohio State.

A proceeding in *quo warranto* to dissolve a corporation, or declare a forfeiture of its charter, or to oust it from the exercise of franchises which it usurps, must be against the corporation itself, and not merely against its individual members: *Id.*

DAMAGES. See *Contract; Municipal Corporation.*

EQUITY. See *Evidence.*

ESTOPPEL.

Assertions as to Title.—Barney, being about to buy land of Vensel, and hearing that Keating had a claim to part of it, asked Keating, without saying he wished to buy, if he claimed any of the land. Keating said "he thought he claimed part, but it did not amount to much, and he did not calculate to give Vensel much trouble about it." From this Barney thought the title was good, and afterwards bought it. *Held*, that in this there was neither such fraud, encouragement nor silence as would estop Keating from recovering the land from Barney's vendee: *Keating et al.* v. *Orne et al.*, 77 Pa.

Keating stating that he had a claim should have put Barney on inquiry; omitting to do so, he took the risk of the claim: *Id.*

Whether an estoppel results from established facts is a question for the determination of the court: *Id.*

An estoppel operates to hold one to facts as he alleges them, although false; and not for the purpose of proving the facts different from the statement: *Id.*

A naked declaration of an intention, made to one giving no reason for the inquiry, will not prevent the assertion of a right contrary to such intention: *Id.*

EVIDENCE. See *Partnership.*

Handwriting—Experts—Husband and Wife—Witness.—Under the Act of April 15th 1869, a wife may be called by her husband as a witness, notwithstanding she may be compelled on cross-examination to give testimony against him; the act provides for the competency of the witness, not for the effect of her testimony: *Ballentine* v. *White*, 77 Pa.

After direct evidence has been given as to the genuineness of writings, the testimony of experts is admissible, either to attack or support the instruments: *Id.*

In equitable ejectments, the judge acts as chancellor, with the assistance of the jury, to determine the credibility of witnesses and questions of fact on conflicting evidence: *Id.*

The character of the whole case must satisfy the chancellor that the equity is clearly, not doubtfully, established by the evidence, if believed: *Id.*

As parties are now witnesses, if their testimony is in direct conflict, whether the chancery rule, that when the equity is distinctly denied by the defendant, the denial must prevail unless there be other evidence than the testimony of the plaintiff alone, shall operate, not decided: *Id.*

EXECUTION.

Leasehold to be treated on Levy as Realty.—A leasehold being a chattel real by reason of its fixed and permanent character, can under

an execution be seized and held only as real estate; not as personal goods, susceptible of transportation: *Titusville Novelty Iron Works' Appeal*, 77 Pa.

The sheriff is no more responsible for a leasehold estate levied on than he would be for real estate: *Id.*

The levy of a leasehold can be only by description of the realty out of which it issues: *Id.*

Under a fi. fa. against a lessee, the sheriff went upon premises leased, examined them, &c.; afterwards and out of view of them he endorsed a description of them on his writ, and returned that he had levied on them as described. *Held* a good levy: *Id.*

An inaccurate description of a levy may be explained by oral evidence: *Id.*

Former Recovery.

Evidence.—In *assumpsit* before a justice, the defendant therein relied in defence wholly upon showing a settlement of the plaintiff's claim, and expressly refused to present any claim in offset, or to submit any question for the determination of the justice, except the question of settlement. On cross-examination the defendant was inquired of and testified as to certain items of deal between him and the plaintiff, and the plaintiff testified as to the same matter. The justice finding those items credited to the defendant on the plaintiff's book, allowed them to the defendant in offset, and rendered judgment for the plaintiff for the balance, from which no appeal was taken. *Held*, in a suit by that defendant against that plaintiff, that those items were barred by that judgment: *Gilbert* v. *Earl*, 47 Vt.

When the record of a judgment does not show of what the judgment was made up, it is competent to show that fact by evidence *aliunde*: *Id.*

Garnishee. See *Attachment.*

Highway. See *Municipal Corporation.*

Sufficiency—Evidence—Injury.—In case for injury upon a highway, the plaintiff submitted to one personal examination by the defendant's medical witnesses during trial, but refused to submit to another, for the alleged reason that she was too feeble and exhausted. *Held*, that, to rebut any unfavorable influence that might be drawn against her for the refusal, it was competent for her to show that some time before the trial, when the agent of a railroad company that had been vouched in to defend, and which the town claimed was liable over to it, visited her in company with one of the selectmen of the town, she requested that the company send physicians to examine her, to ascertain how badly she was injured: *Durgin and Wife* v. *Town of Danville*, 47 Vt.

It was *held*, that under the events and circumstances that constituted and characterized the accident in question, no rigorous rule of law could be formulated by which it could be determined that a given width of travelled track, in a certain depth of snow, and bounded by banks of a given height and slope, would constitute a highway in good and sufficient repair: *Id.*

The court refused to charge that if the plaintiff had driven over the road in question once to three times a week for three weeks previous to the accident, and was acquainted with the road, and at the time of the

accident was driving a horse perfectly under control, and it was light enough to see the banks of snow, and the passage through the drifts was six feet wide, and he drove on to the bank and tipped over, it was such carelessness that, as matter of law, no recovery could be had, as with ordinary care he could have driven such a horse over such a road. *Held*, no error: *Id.*

INSURANCE.

Mutual Company.—Persons insuring in a mutual insurance company are associated in the nature of limited or special partners: *Krugh* v. *Lycoming Fire Ins. Co.*, 77 Pa.

An insurance company was incorporated by Act of Assembly in 1840; the insured to deposit a note in a sum fixed by the directors, of which ten per cent. was to be immediately paid and part or whole of the remainder when the directors should deem it requisite for the payment of losses and expenses, and at the expiration of the insurance, so much of the note as remained unpaid to be given up. A supplement in 1842, authorized a lien, waiving inquisition, on the property of the insured for the amount due on the note, the company filing a memorandum containing the name of insured, description of property, "amount of the note unpaid," &c. *Held*, that the act was valid: *Id.*

Defendant insured in 1870, the policy stipulating that he accepted it subject to the terms, &c., of "the act of incorporation and by-laws," &c. *Held*, that this waived his right to require the company to collect an assessment on the note otherwise than by the Act of 1842: *Id.*

The Constitution of the United States or of Pennsylvania did not preclude his waiving a trial by jury and agreeing to the manner in which judgment might be entered against him: *Id.*

JOINT CONTRACTORS. See *Vendor.*

JUDGMENT.

Collateral Impeachment of Judgment merely voidable.—The general rule is, that judgments which appear to have been regularly obtained, are conclusive upon parties and privies, and cannot be impeached in any collateral proceeding. If one against whom such judgment be obtained would avoid it, he must do so by some proceeding instituted for that purpose, and in which an issue can be formed upon the question affecting its validity. Hence, case will not lie for arrest and imprisonment upon an execution issued upon a judgment merely voidable, but not void: *Kimball* v. *Town of Newport*, 47 Vt.

MUNICIPAL CORPORATION.

Defective Highway—Ice and Snow—Damages.—A municipal corporation is liable for damages for injuries for neglect of its officers in not keeping its streets, roads and bridges in repair: *McLaughlin* v. *City of Corry*, 77 Pa.

If the municipal authorities are negligent in allowing a dangerous obstruction in a public highway, which they could have removed, they are liable for damages to a person injured thereby without any fault of his own: *Id.*

A city allowed ice and snow to accumulate in drifts and ridges on a sidewalk and remain for weeks, the plaintiff in passing lawfully on the

walk slipped on it, fell and injured himself. Whether the snow and ice had so accumulated by default of the officers of the city, and whether by reason thereof the plaintiff was injured, were for the jury, and if so the city was liable to the plaintiff for damages: *Id.*

If the obstruction was of such long duration as to be generally observable, the city was chargeable with constructive notice: *Id.*

The measure of damages to plaintiff would be the direct expenses by reason of the injury, the inconvenience he was subjected to, pain, pecuniary loss sustained and likely to be sustained during life, and his actual permanent loss of earning power from the accident: *Id.*

What the plaintiff might be receiving as wages would not go in mitigation of damages, but might be considered with other things as going to prove what his earning powers were: *Id.*

National Bank.

Indebtedness of one Person to greater Amount than one-tenth its Capital.—In a suit by a National Bank against an endorser on notes discounted for the drawer's accommodation, he filed an affidavit of defence that at the time of the discount the drawer was indebted to the bank for money lent in excess of one-tenth of its capital; and averred that the loan was void under the National Bank Act of June 3d 1864. *Held*, that the affidavit was defective in not averring that the excess was knowingly and voluntarily lent to the drawer: *O'Hare* v. *Second National Bank*, 77 Pa.

Accidental excess made in mistake or ignorance will not forfeit an honest loan: *Id.*

Such excess known to the bank only is not such an unlawful act as will avoid the loan: *Id.*

The fact of excess of indebtedness is a matter aside from the loan, not entering into its terms and therefore collateral: *Id.*

A loan of money and a note taken as security are part of the proper business of the bank within its power and therefore not illegal in themselves: *Id.*

Partnership. See *Witness.*

Payment to one Partner in Merchandise after Dissolution.—Altvater and Marks, being partners as stone-masons, and having contracts for buildings, were purchasing stone for their business; Altvater sold tools to the defendant, owning a stone-quarry, under a contract that they should be paid for in stone; the stone were delivered at the time specified, the firm having been dissolved previously; Altvater used them for his own purposes. *Held*, that the payment for the tools by delivery of stone to Altvater was good, although after dissolution, if defendant did not know of the dissolution: *Kenney* v. *Altvater*, 77 Pa.

The purchase of stone by Altvater was within the scope of the firm's business, and the payment by delivery of the stone to him was in fulfilment of the contract: *Id.*

The misapplication by Altvater of the stone did not impair the validity of the payment: *Id.*

A delivery in good faith to one partner, according to a contract, is a delivery to both; each having authority to receive it: *Id.*

A person dealing with a firm must have actual notice of dissolution in

order to avoid his transactions with one of the partners after dissolution : *Id.*

A letter stating the dissolution of a firm, sent by mail properly directed to defendant, with evidence that the letter was not returned from the Dead Letter office, is not sufficient, without other evidence of its receipt, to charge defendant with notice of the dissolution, but with slight corroboration a jury might find such notice : *Id.*

The rule that letters properly directed and marked are evidence as of the dishonor, &c., of negotiable paper, is restricted to commercial paper : *Id.*

QUO WARRANTO. See *Corporation.*

RELEASE. See *Vendor.*

SALE.

Optional Time for Delivery—Tender.—Bonsall bought from the plaintiffs *for his firm* 5000 barrels of oil, to be delivered at buyer's option before December 31st, on ten days' notice, in " bulk cars or bulk boats at Pittsburg ;" if delivered by A. V. or W. P. Railroad, buyer might designate any other point on those roads ; payment to be made as lots were gauged and delivered. He bought also *for himself* from plaintiffs 5000 barrels on precisely the same terms. On the 21st of December Bonsall gave plaintiffs two notices in the same terms to deliver the respective lots of oil, at such point or landing as he might designate, &c. The plaintiffs shipped all the oil to Pittsburg on 30th of December, had it inspected and gauged, and on 31st told Bonsall they would give him the numbers of the cars that he might examine ; he made no reply, but shortly afterwards, on the same day, gave plaintiffs notice to deliver at the Anchor works on A. V. Railroad ; plaintiffs directed the oil to be delivered there ; there not being room for all on that siding, the nearest sidings were filled, ready to put on Anchor siding as the others were emptied ; they tendered to Bonsall 5981 barrels in bulk, the extra 981 to be on his own contract. He refused to receive, giving no reason. *Held*, that it was for the jury whether the tender was sufficient : *Lockhart et al.* v. *Bonsall et al.*, 77 Pa.

It was Bonsall's duty to give reasonable notice of the place of delivery and to be there ready to receive and pay for the oil : *Id.*

The Anchor siding not having room to hold the cars, it was sufficient if the plaintiffs put the oil on the nearest sidings, ready to be moved on the Anchor siding as it was emptied : *Id.*

The sufficiency of the tender is to be determined by all the facts and circumstances connected with it and the motives of the parties : *Id.*

Bonsall was not bound to accept more or less than his contract, but if there was a larger quantity, from which he might separate the 5000 barrels, it not being plaintiffs' engagement to pump the oil from the cars, it was sufficient : *Id.*

If the plaintiffs offered in good faith to deliver the oil, they were not bound to set apart the precise quantity named in the contract before offering to deliver : *Id.*

SCHOOLS. See *Constitutional Law.*

SPECIFIC PERFORMANCE. See *Vendor.*

STATUTE. See *Constitutional Law.*

TRESPASS.

Joint Owners—Liability of several Owners for joint Trespass.—Tenants in possession may be sued jointly in an action for trespass committed by animals kept by them in common upon the premises, although the several animals are owned by them separately and individually: *Jack* v. *Hudnall*, 25 Ohio State.

VENDOR AND PURCHASER.

Sale—Effect of Release by one Vendor.—If one joint vendee release his interest in a joint right of action against the vendor for false and fraudulent representations made in the sale, the interest of the other vendees is thereby released, although the releasor assumed to release only his own interest: *James* v. *Aiken*, 47 Vt.

The plaintiff had given such release, and received $1000 therefor. Afterwards he paid notes executed jointly by himself and the defendant and others, joint vendees, for the purpose of raising funds to pay towards the property purchased, and brought this suit for contribution. *Held*, that the defendant was entitled to share in the $1000; that to that extent the plaintiff never had claim for contribution against him; and that, as it was not in extinguishment of any cause of action that ever existed, the transaction might be shown under the general issue, and notice under § 32, ch. 30, of the Gen. Stats., was not necessary: *Id.*

Specific Performance—Unhealthiness of Place.—In negotiating for the sale of a farm, on the inquiry of the vendee who declined to purchase unless the neighborhood was not sickly, the vendor assured him that it was free from sickness, the vendee then entered into articles for the purchase. The neighborhood was subject to fever and ague. It was *held* the agreement could not be enforced: *Holmes's Appeal*, 77 Pa.

It seems that such agreement would not be enforced if the neighborhood was unhealthy and the vendee was ignorant of it, even if there had been no misrepresentation by the vendor: *Id*

WITNESS. See *Evidence.*

Party—Competency where other Party dead—Partners.—Where one partner is dead, in a suit against the survivor for a claim against the firm, the plaintiff is not a competent witness, under the Act of April 15th 1869: *Hanna* v. *Wray*, 77 Pa.

When a party to a thing or contract is dead and his rights have passed by his own act or that of the law to another representing his interest in the controversy, the survivor to that subject cannot testify to matters occurring in the life of the deceased party: *Id.*

The rights and liabilities of a deceased partner under the partnership, devolve upon the surviving partner: *Id.*

In the settlement of the partnership account of the survivor with the representatives of the deceased partner, the survivor would be entitled to credit for a judgment for a firm debt recovered against him without his collusion or neglect: *Id.*

Whether plaintiff was competent under a special offer to testify as to matters between him and the surviving partner only, not decided: *Id.*